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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,460	12/19/2000	Gary R. McLuen	NET-00105	8839

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EXAMINER

GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,460

Applicant(s)

MCLUEN ET AL.

Examiner

Brian R. Gordon

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-43 is/are rejected.
- 7) ☒ Claim(s) 44-45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-6-04, 10-18-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed October 25, 2004 have been fully considered but they are not persuasive.

Applicant asserts the prior art does not teach the "coupling" step. The examiner disagrees, for "coupling" in the instant invention means physically attaching/connecting the two elements together. However on page 14, lines 16-18, Zuckerman et al. disclose "a plurality of linear arrays of reaction vessels 254, wherein all of the barrel drains in each linear array are individually actuated by an actuation means 256 **coupled** to that array. This implies that actuation means has the ability to allow for coupling and uncoupling of the reaction vessels/drains to the waste vessel/tube 260 thereby allowing the contents of the vessel to be drained by exerting a pressure differential established by the vacuum manifold 258. Applicant claims recite coupling the waste to a drain. This does not exclude indirect coupling, the components being attached via the coupling of other intermediary components. The figures do not show the waste tube being directly connected to any drain. It appears as if the waste tube provides negative pressure in the bowl 400 for liquid to drain out of 740 (see figure 4). How is attachment possible when the tube is not aligned with the drain? As such the examiner asserts the coupling of the vessels to the waste vessel as disclosed by Zuckermann meets the limitation of the claims.

However, claim 39 does not require the "coupling" step.

Zuckermann et al. discloses employment of the vacuum manifold 258 to establish a pressure differential between the interior and exterior of the selective vessels being drained.

In view of interpretation of "coupling", the examiner withdraws the rejection as based upon Judd. Judd employs two-way valves to open or close a passageway that is constantly connected. Therefore, the prior art does not specifically teach coupling and uncoupling of the elements.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 31-42 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 98/10857 to Zuckermann et al.

Zuckermann et al. disclose a method of selectively and sequentially dispensing a plurality of reagent solutions to a plurality of vials (254) divided into a first bank of vials and a second bank of vials and selectively purging material from the first bank of vials and the second bank of vials (figs. 1-5; page 6, lines 16-19; page 3, lines 6-25).

One or more of the plurality of reagent solutions is dispensed to a selective one or more of the plurality of vials to perform synthesis within the selective one or more of the plurality of vials (page 3, lines 6-25; page 13, lines 9, 10, 16-29). Dispensing is performed in a parallel fashion when one or more of the plurality of reagent solutions is dispensed into more than one of the plurality of vials by a multi-channel pipettor (page 3, lines 16-19, 26, 27; page 14, lines 3-7). Dispensing is also performed in a serial fashion since reagent solutions are added step-wise to each of the vials (page 6, lines 16-19).

A drain (258,260) associated with a selective one of the first bank of vials and the second bank of vials is engaged within a purging system (fig. 5; page 14, line 11-page 15, line 10). A rack (252) contains a plurality of linear arrays of vials in which all of the barrel drains in each linear array are individually actuated by an actuation means (256) coupled to that array (fig. 5; page 14, lines 16-18). The rack can be placed on a vacuum manifold (258), which has means (260) for connecting the manifold with a vacuum source (fig. 5; page 14, lines 18-21). The vacuum manifold is evacuated to provide a vacuum under the vials contained within the rack to facilitate draining of the vials (page 14, lines 21-29). The vacuum forms a pressure differential between an interior and exterior of selective one of the first bank of vials and second bank of vials to expel material from the selective one of the first bank of vials and second bank of vials.

Material is purged from the selected one of the first bank of vials and the second bank of vials through the purging system (figs. 1-5). A matrix of vials is formed by a plurality of substantially parallel linear arrays of modular vials in which the vials in each

discrete linear array of vials in the matrix can be actuated in tandem to the exclusion of vials in other linear arrays by operation of an actuation means (228) to simultaneously actuate the barrel drains (220) associated with each of the vials in the linear array (figs. 1-5; page 3, lines 22-25). When the rack with the linear arrays of vials is placed on the manifold in a vacuum-tight relation and evacuated to provide a vacuum under the vials and form a pressure differential between an interior and exterior of the vials and actuation means (256) is operated, the barrel drains in each of the vials are opened to drain materials into the vacuum manifold for collection by a waste receptacle (fig. 5; page 14, lines 23-29).

Zuckermann et al. discloses employment of the vacuum manifold 258 to establish a pressure differential between the interior and exterior of the selective vessels being drained.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/10857 to Zuckermann et al.

Zuckermann et al. does not disclose uncoupling the waste tube form the selective one drain.

It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize in order to remove or replace a reaction vessel the actuation

means 256 must first be deactivated (uncoupling of the drain) in order to allow for removal of the vessel.

5. Claims 42 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by Jonsson et al. US 6,296,762.

Jonsson et al. disclose a synthesis system comprising two individual vials (2, 3) each vial is associated with a drain at its bottom. Switching valve 9 (allows for one container to be flushed while the other is in use for synthesis) is provided to allow for the individual vials to be coupled and decoupled to the waste tube which include pump 31 that provides for a pressure differential to allow for liquid to be drained/emptied from the individual vials.

Allowable Subject Matter

6. Claims 44-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach nor fairly suggest a step of coupling comprising moving the waste tube as specified by applicant.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fuerst, Otto et al.; Hashimoto; Kiyoji et al.; Levin; Robert et al.; Maiefski; Romaine et al.; Kirk; Gregory L. et al.; Coassin; Peter J.; and Turpin; Pierre disclose fluid delivery devices and methods.

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, with 2nd and 4th F off.

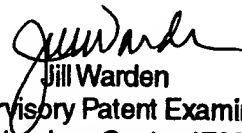
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

brg


Jill Warden
Supervisory Patent Examiner
Technology Center 1700